HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

WRIT PETITION NO.976 of 2004.

PETITIONERS

1. Rajendra Kumar Sharma, S/o Shri Ram Dayal Sharma, Aged 43 years.
2. Narsingh Nandwana S/o Late Shri Ramlal Nandwana, Aged 45 years.
3. Santosh Kumar Sahu, S/o Shri Bilas Ram Sahu, Aged 32 years.
4. Garjan Singh Dubey, S/o Late Shri Pyarelal Dubey, aged 80 years.
5. Mukesh Kumar Sharma, S/o Ram Dayal Sharma, Aged 35 years.

All R/o Ganjpara Ward No. 14 Bemetara, District Durg (C.G.)

Versus

RESPONDENTS

1. Omprakash Gilda, S/o Shri Ramlal Gilda, Resident of Ganjpara, Ward No. 14, Bemetara
2. Municipal Council, Bemetara, through : Chief Municipal Officer, Nagar Palika Parishad Bemetara, District – Durg (CG)
3. State of C.G. Through Collector, Durg

Present : Mr. Rajeev Shrivastava, learned counsel for the petitioners.

Mr. P.K.C. Tiwari, learned Sr. Adv., with Mr. Shashibhushan, learned counsel for respondent No.1.

Mr. Anand Kumar Tiwari, learned counsel for respondent No.2.

Mr.Utkarsha Verma, learned counsel for the State.

ORAL ORDER
(Passed on 21ST December, 2005)

This writ petition is filed by five persons who are residents of Ganjpara, Ward No.14, Bemetara, district Durg complaining that if the first respondent is allowed to establish Huller Type Mini Rice Mill in the proposed site, that Mill would create "not only immense disturbance to

their studies but would also cause an irreparable loss to their future prospects". As I could see from the writ petition, the grievance of the petitioner is also rested on the fact that on an earlier occasion 'no objection certificate' issued to the first respondent was cancelled and therefore the second respondent ought not to have subsequently granted 'no objection certificate'. It is also alleged that if the proposed Huller Type Mini Rice Mill is permitted to be established in the site proposed it would create "immense pollution" in the area. These are the only the allegations made in the writ petition.

(2) Having heard learned counsel for the parties, I do not think that it is a fit case where this Court would undertake adjudication of the lis brought before the Court and pronounce its opinion. It is needless to state the issues that arise for decision-making are all essentially questions of fact. Furthermore, as a hypothesis, it could not be said that simply because on earlier occasion 'no objection certificate' issued to the first respondent was cancelled by the second respondent, that fact itself without anything further would not come in the way of the second respondent granting no objection certificate at a later stage if the first respondent were to comply with the law requirements. Furthermore, it needs to be noticed that whether the establishment of the Rice Mill in the proposed site would pollute the environment or would impair any of the legal rights or constitutional rights of the residents of Ganjpara village are all questions of fact which have to be resolved on the basis of the evidence that may be adduced by the parties. It may also require examination of the parties and tendering such parties for cross-examination by each other.

(3) This writ petition is also liable to be dismissed on the ground of non-disclosure of a relevant fact. In his reply filed by the first respondent on 12/07/2004 in this case, the first respondent in paragraphs 1 and 2 has stated that the petitioners have deliberately did not disclose the fact of initiation of the proceedings by the Sub Divisional Magistrate under Section 133 of the Code of Criminal Procedure (*for short 'the Code'*) to which the petitioners are parties. The petitioners for the reasons best known to them have not chosen to file any rejoinder to the reply denying the above allegation. It is well settled that a person who approaches this Court under Article 226 of the Constitution for discretionary remedy should approach this Court with clean hands and he should disclose each and every material fact which will have bearing on the decision-making on the issue brought before the Court. It cannot be said that the pendency of the proceedings under Section 133 of the Code with regard to the same Rice Mill has no bearing on the decision-making on the issue brought before this Court by way of this writ petition. Perhaps this Court would not have entertained this writ petition if it were to notice at the stage of admission itself that the jurisdictional Sub Divisional Magistrate had already initiated the proceedings under Section 133 of the Code. Nevertheless, I am of considered opinion that the right to move the jurisdictional civil Court or other statutory fora for the alleged violation of the fundamental right or statutory right should not be denied to the petitioners. I think that accountability for suppression made by the petitioners in the pleading would adequately met with by imposing exemplary costs.

(4) In the result and for the foregoing reasons, this writ petition is dismissed with exemplary cost fixed at Rupees Five Thousand payable

to the first respondent within one month. However, it is made clear that this order would not come in the way of the petitioners working out their remedies either before the jurisdictional Court or before the statutory or quasi judicial for a, in accordance with law.

Sd/-
Chief Justice

Brajesh